

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

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UNITED STATES DISTRICT COURT
For the DISTRICT of NEW HAMPSHIRE

Harold W. Caton)

(Plaintiff pro-se))

v.)

CIVIL ACTION No. 04-439 JD

Gale Norton)

Secretary of the Interior)

United States of America)

(Defendant))

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the release of disclosed agency records wrongfully withheld from Plaintiff by Defendant. Plaintiff seeks a jury trial.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).
3. **Plaintiff** Harold W. Caton (Caton) is a citizen of the United States of America and his residence is 403 Dover Point Road, Dover, New Hampshire 03820.
4. **Defendant** Gale Norton, in her official capacity as the Secretary of the Interior, a Division of the United States of America, which operates the National Park Service (NPS) with offices at 67 Kirk Street, Lowell, Massachusetts (a.k.a. Lowell National Historical Park of Lowell, Massachusetts).

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FACTS

5. Mr. Caton made a Freedom of Information Act (FOIA) disclosure request to read and have copies of documents of four construction contracts under care, custody or control of the Defendant. Mr. Caton is directly or indirectly involved with all four construction contracts upon or near the Northern Canal in Lowell, Massachusetts through Mr. Caton's involvement with a construction company.
6. The four contracts are:
 - A. phase I of the Canal Walk (#C1780-0032);
 - B. phase II of the Canal Walk (#C1780-00-0004);
 - C. painting gate house within phase II contract area (#P178001 0031) and
 - D. tree removal within phase II contract area (#P178001 0035).
7. Defendant's employee is Ms. Ambrosino the Public Information Officer (a.k.a. FOIA Officer) of the NPS operating out of NPS offices located at 67 Kirk Street, Lowell, Massachusetts.
8. Defendant's employee is Ms. Dolce who is a Contracting Officer of the NPS operating out of NPS offices located at 67 Kirk Street Lowell, Massachusetts.
9. Upon information and belief, Ms. Ambrosino and Ms. Dolce both have authority of the Defendant and both being continually trained by the Defendant and both having superior knowledge and experience in their fields of vocation.
10. Ms. Ambrosino and Ms. Dolce both agreed with Mr. Caton to: (I) provide the above referenced construction contract documents requested by Mr. Caton; (II) allow the FOIA requester (Mr. Caton) to read the documents; (III) allow Mr. Caton to "flag" via "post-its" (adhesive backed colored piece of paper) documents or files he wanted copies of and (IV) the "flagged" documents would be copied and immediately forward the copies to Mr. Caton.
11. Mr. Caton having reached a mutual agreement with Ms. Ambrosino and Ms. Dolce, as to what information was to be disclosed, Mr. Caton waited an availability date to review the documents from the NPS. Mr. Caton was not informed that there would be a further review of the FOIA request nor was Mr. Caton ever informed there would be any further review of the FOIA request and delays in having the copies sent to him.
12. Ms. Dolce subsequently instructed Mr. Caton by telephone that the requested FOIA information would be available to Mr. Caton on the morning of December 22, 2003 at Ms. Dolce's office located at 67 Kirk Street, Lowell, Massachusetts.

13. On the morning of December 22, 2003 and at the LNHP Lowell offices, Ms. Dolce stated to Mr. Caton that "Ms. Ambrosino has placed adhesive tape across payroll records" that were within the stacked folders which were upon Ms. Dolce's reference table and Ms. Dolce went on to state and instruct Mr. Caton that "you are not allowed to look at pages that have adhesive tape on them".
14. Immediately thereafter, Ms. Dolce directed Mr. Caton to folders upon a desk immediately adjacent to her desk. The combined height of the documents, which are mostly 8 1/2" x 11" sheets of paper, is approximately twenty (20) inches high. The information read by Mr. Caton consisted of typed and hand written information on: letters, emails, faxes, transmittals, inspectors report, memorandums, memos, reports, logs, daily diaries, change orders, sketches, drawings, phone logs, hand written notations upon them, phone call notes, synopsis, drafts, hand written meeting notes, and typed meeting notes (some of which were single pages, others stapled together or paper clipped together). The disclosed information is about four federal construction contracts of the LNHP, National Park Service, Department of the Interior, as previously stated within paragraph 6 of this complaint.
15. On December 22, 2003, Ms. Dolce and another member of the LNHP staff (believed to be a receptionist) monitored Mr. Caton while Mr. Caton read the disclosed information and "flagged" for copying certain non-redacted documents.
16. While reading the disclosed information on December 22, 2003, Mr. Caton requested the LNHP monitor to make a copy of two e-mails from an employee of the LNHP's (Mr. Parrott, the CO's technical representative). Mr. Caton also "flagged" for copying those two e-mails, as well. (see Tab A, attached hereto [numbers A1 and A2] (see Tab J#45 redacted and TAB J #66 redacted for comparison between A1 original and A2 original, respectively).
17. Mr. Caton did not read documents which he was instructed not to read which were still included within the folders or files, which had adhesive tape across various sections of the documents within the folders and files.
18. Mr. Caton has not requested nor is he requesting copies of those folders and files which Mr. Caton was instructed not to read by the Ms. Dolce and Ms. Ambraino.
19. On December 22, 2003, Mr. Caton spent approximately three and a half-hours to read the information within the stacked folders.
20. By letter dated February 9, 2004 (Tab B) Ms. Ambrosino denied release, only under Exemption (5), of at least seventy five documents, which Mr. Caton "flagged via Post-its" on December 22, 2003.
21. By letter dated on February 19, 2004 (Tab C), Mr. Caton filed a timely Appeal stating the Defendant had voluntarily disclosed and/or waived/Granted to Mr. Caton information contained within these documents, files and folders which Mr. Caton read on December 22, 2003.

22. By letter dated March 23, 2004 (Tab D) Defendant's legal office responded and issued an Appeal tracking number of 2004-102.
23. Defendant is obligated to respond to Mr. Caton's Appeal within twenty days. Mr. Caton called to check on the Appeal status numerous times (Tab D). Defendant responded six and a half months later by letter dated October 15, 2004 (see par 25 below), well after the response time stated by law.
24. Unbeknownst to Mr. Caton, the Defendant's Office of the Solicitor, Division of General Law, sent a five page memorandum dated August 13, 2004 to the Defendant's Office of the Solicitor, Department FOIA Appeals Officer, which stated:
 - (I) "We have reviewed all of the documents at issue in this Appeal and discuss below whether the documents are protected from disclosure by any of the FOIA's nine exemptions." (Tab F 2nd par);
 - (II) "Because NPS allowed Mr. Caton to review the documents at issue in the Appeal," (see Tab F, page 4, 1st sentence);
 - (III) "During Mr. Caton's review of the files, he flagged with Post-it Notes the documents that he wanted copied." (Tab F, page 4, 2nd par, 3rd sentence) and
 - (IV) "Exemption (6)...(tab F page 3, 2nd par) and further stated (Tab F page 3, 3rd par 1st sentence):
 - a. "We have used black marker to redact from three of the documents an NPS employee's cellular telephone number," footnote 9 states, "These three documents are marked in the upper right corner as 60, 61 and 62."
 - b. "and from six documents an SOL attorney's personal e-mail address and fax number." footnote 10 states "The six documents are marked in the upper right corner as 46, 47, 48, 49, 50 and 51."
25. By letter the United States Department of the Interior, Office of the Solicitor dated October 15, 2004 (Tab E (which included Tab F dated August 13, 2004)) informed Mr. Caton that the Appeal (Tab C) was granted in part and denied in part (Tab F). Wherein, Mr. Caton would be receiving thirty non-redacted documents and forty three redacted documents and completely withheld information to two others.
26. By letter dated November 5, 2004 (Tab G) from Ms. Hammond of the NPS, Lowell, Massachusetts, wherein it stated "Enclosed please find the documents granted to be released...": thirty non-redacted documents (Tab H)(identified in upper right corner as 7, 10, 11, 12, 15, 16, 17, 18, 22, 26, 28, 30, 31, 32, 33, 34, 36, 37, 38, 39, 41, 42, 52, 53, 59, 65, 72, 73, 74, and 75), and forty three redacted copies (Tab J)(identified in upper right corner as 1, 2, 3, 4, 5, 6, 8, 9, 13, 14, 19, 20, 21, 23, 24, 25, 27, 29, 35, 40, 43, 44,

45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 60, 61, 62, 63, 66, 68, 69, 70, and 71). Defendant did not release two other documents (identified as 64 and 67).

27. By letter dated November 5, 2004 (Tab G) the NPS enclosed forty three documents (Tab J) released in part (redacted) and two completely withheld. Mr. Caton asserts that Defendant is wrongfully withholding disclosed information on forty five documents
28. Mr. Caton has not been provided a Vaughn Index of the information read and denied documents (a total of forty five) (see Vaughn v. Rosen, 523 F.3d 1136, 1146 (D.C. Cir. 1975).
29. Mr. Caton has exhausted the applicable administrative remedies with respect to his FOIA requests to Defendant.
30. Defendant is wrongfully withholding copies of the disclosed information on forty five documents, which were voluntarily disclosed and read by Mr. Caton on December 22, 2003.

Wherefore, plaintiff, Mr. Caton prays that this Honorable Court:

1. Declare that the Defendant agreed to provide to Mr. Caton copies of documents as voluntarily disclosed and read by Mr. Caton on December 22, 2003;
2. Declare that the Defendant waived its discretionary rights of Exemption (5) of the FOIA;
3. Order the Defendant to make available to Mr. Caton legible non-redacted copies of: thirty six documents identified as: 1, 2, 3, 4, 5, 6, 8, 9, 13, 14, 19, 20, 21, 23, 24, 25, 27, 29, 35, 40, 43, 44, 45, 54, 55, 56, 57, 58, 63, 64, 66, 67, 68, 69, 70, and 71;
4. Order Defendant to make available to Mr. Caton legible copies of six non-redacted documents identified as: 46, 47, 48, 49, 50 and 51 with only the NPS's SOL attorney's personal e-mail address and fax number redacted (see Tab F 3rd par 1st and footnote 10, exemption 6);
5. Order Defendant to make available to Mr. Caton legible copies of three non-redacted documents identified as: 60, 61 and 62 with only the NPS's employee's cellular telephone number redacted (see Tab F 3rd par 1st and footnote 9, exemption 6) ;
6. Provide for expeditious proceedings in this action;
7. Retain jurisdiction over this case to ensure compliance with this Court's decree;
8. Award Mr. Caton its costs and reasonable attorney fees incurred in this action and
9. Grant such other relief as the Court may deem just and proper.

I declare under penalty of perjury the foregoing is true and correct

Harold W. Caton
Harold W. Caton date
(Pro-se) Nov. 23, 2004

Harold W. Caton personally appeared before me on this 23th day of November, 2004 in the City of Concord, State of New Hampshire, Merrimack County.

Sara A. Thompson 6

SARA A. THOMPSON, Notary Public
My Commission Expires April 12, 2005